

HIGH COURT OF AUSTRALIA

MASON, A-C.J.
MURPHY, WILSON, BRENNAN and DEANE JJ.

THE CHURCH OF THE
NEW FAITH

APPLICANT

AND

THE COMMISSIONER FOR
PAYROLL TAX

RESPONDENT

ORDER

Special leave to appeal granted.

Appeal allowed with costs.

Judgment of the Full Court of the Supreme Court of, Victoria set aside and in lieu thereof order:

- (i) that the appeal to that Court from the judgment of Crockett J. be allowed with costs;*
- (ii) that the judgment of Crockett J. be set aside and in lieu thereof order -*
 - (a) that the appeal against the assessment of the appellant to Pay-roll tax be allowed with costs;*
 - (b) that the applicant's assessment to Pay-roll tax be reduced to nil.*

27 October, 1983

Solicitors for the Applicant: Cohens, Frenkel, Berkovitch,
Kefford & New
Solicitor for the Respondent: R. Lambert, Acting Crown
Solicitor for Victoria

MASON A-C.J. and BRENNAN J. Pursuant to the provisions of the *Associations Incorporation Act, 1956-1965 (S.A.)*, The Church of the New Faith Incorporated was incorporated under that name on 31 January 1969. The corporation was registered in Victoria pursuant to the *Companies Act 1961 (Vic.)* as a foreign company. Subsequently, a change in name to "The Church of Scientology Incorporated" was registered in South Australia. Though no change of name has been registered in Victoria, the corporation uses and is apparently known by its new name in that State.

The corporation was assessed to pay-roll tax under the *Pay-roll Tax Act 1971 (Vic.)*. The wages assessed as liable to pay-roll tax under that Act were paid or payable during the period 1 July 1975 to 30 June 1977. The corporation objected to the assessment upon the ground that the wages were exempt under the provisions of s.10(b). At the relevant time (the section was amended in 1979), s.10(b) provided:

" 10. The wages liable to pay-roll tax under this Act do not include wages paid or payable -

...

(b) by a religious or public benevolent institution, or a public hospital;"

The corporation, contending that it was a religious institution for the purposes of this section, objected to the assessment but the Commissioner of Pay-roll Tax disallowed the objection. The corporation requested the Commissioner to treat its objection as an appeal and to cause the objection to be set down for hearing in the Supreme Court of Victoria. Crockett J. dismissed that appeal; the corporation then appealed to the Full Court. The Full Court dismissed the appeal and the corporation now applies for special leave to appeal against that dismissal.

The case has been fought throughout as though the answer to the question "Is Scientology a Religion?" furnishes the answer to the question whether the corporation was, during the relevant period, a religious institution. That basis has been adhered to in the argument before this Court, and it ought not to be departed from in determining this application. That is not to say that the basis adopted by the parties raised the

relevant question for decision. It does not follow that the common religion of a group stamps a religious character on an institution founded, maintained or staffed by members of that group or that the purpose or activity of such an institution is religious. The basis adopted by the parties in fighting this case has concealed the factors which are relevant to the character of the corporation, namely, the purpose for which the corporation was formed and is maintained and the activities of the corporation. The question whether those factors are religious in nature has not been judicially considered.

Thus special leave is applied for in order to argue on appeal the question chosen by the parties as the issue: Is Scientology a religion? Counsel were invited to argue the application fully, so as to canvass the issues of the appeal which would arise if special leave were granted. Accordingly, the question "Is Scientology a Religion?" was argued by reference to all the affidavits read and the oral testimony given before the Supreme Court and by reference to tendered exhibits which included a veritable library of books written by one Lafayette Ronald Hubbard. Scientology is said to have been "discovered, developed and organized" by Mr Hubbard alone. The library is large, and the meaning of much of it is obscure. An explanation of some parts of those books was undertaken in the oral evidence given before the Supreme Court, but many other parts - some of impenetrable obscurity - were not referred to in the affidavit and oral evidence. Is the Court to examine and to construe the writings of Mr Hubbard as though they were ordinary documentary exhibits? The obscurity of some of his writings would make that course particularly difficult. There are, however, compelling reasons for not going into areas of obscurity that have not been explained by the affidavits or the oral evidence. The meaning of obscure passages in writings advanced as religious writings is not necessarily ascertained by taking the ordinary meaning of the words used. The true meaning of such passages - that is, the meaning intended by the author or apprehended by the adherents of the religion - can be furnished by those for whom the passages bear that meaning, but may well be missed by others. Thus it would be erroneous to assume that the account of creation contained in the Book of Genesis is taken literally by many of those who accept its authority as an inspired biblical text. No valid statement can be made as to a tenet of a religion unless its validity as a tenet is recognized by the adherents of that religion. A court cannot be assured

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that the meaning of writings said to be of religious significance is the meaning which the ordinary reader would attribute to them. When the tenets of a putative religion are to be ascertained, a court would be ill-advised to go searching for tenets which are said to inhere in obscure writings without the guidance of those who can explain the meaning which the adherents of the religion accept. It would be ill-advised in this case to take the obscure parts of Mr Hubbard's writings which have not been illuminated by evidence and, by construing those parts, to find therein the tenets which he intended to teach, or which his followers believe and accept.

Therefore the question which falls for determination by this Court if special leave be granted must be stated anew. The question whether Scientology is a religion cannot be answered, for there seem to be important, perhaps critically important, tenets of Scientology which the parties left without full examination. The question which can be answered is whether the beliefs, practices and observances which were established by the affidavits and oral evidence as the set of beliefs, practices and observances accepted by Scientologists are properly to be described as a religion.

Should special leave be granted in order to consider that question? Two circumstances combine to give an affirmative answer: the legal importance of the concept of religion and the paucity of Australian authority. Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society. The chief function in the law of a definition of religion is to mark out an area within which a person subject to the law is free to believe and to act in accordance with his belief without legal restraint. Such a definition affects the scope and operation of s.116 of the Constitution and identifies the subject matters which other laws are presumed not to intend to affect. Religion is thus a concept of fundamental importance to the law. Moreover, although this case does not arise under s.116 of the Constitution or under any part of its fourfold guarantee of religious freedom, it is inevitable that the judgments in the Supreme Court, so long as they stand without consideration by this Court, will influence the construction placed upon s.116 of the Constitution by other Australian courts.

Hitherto the concept of religion has received little judicial exegesis in Australia, whether under s.116 or otherwise. In *Adelaide Company of Jehovah's Witnesses*

Inc. v. The Commonwealth (1943) 67 C.L.R. 116, only Latham C.J. and McTiernan J. found it necessary to state a view as to the connotation of the term. Since then, the concept has been considered by the courts of the United States and England. The opinions of those courts are helpful, but it is time for this Court to grapple with the concept and to consider whether the notions adopted in other places are valid in Australian law. The disadvantage in leaving the concept without examination by this Court was manifested by the course of the argument before us. Counsel for the corporation contended for a wide definition of religion in accordance with the indicia of a religion set out by Adams J. in *Malnak v. Yogi* 592 F.2d 197 (1979), though it is clear that the formulation of those indicia owed much to the tests adopted by the Supreme Court of the United States in construing particular Acts of the Congress. On the other hand, counsel for the Commissioner contended for a narrow definition which accorded with the test of a religion propounded by Dillon J. in *In re South Place Ethical Society; Barralet v. Attorney-General* [1980] 1 W.L.R.1565, at p.1572, a test which confines the concept to theistic religions. It is undesirable that the clarification of a concept important to the law of Australia should be left to the courts of other countries when there is an appropriate opportunity for the concept to be clarified by this Court. Of course, when Australian courts are engaged in clarifying concepts important to Australian law, they may be aided by appropriate citation from the judgments of courts outside the Australian hierarchy if there is no binding or sufficiently persuasive Australian authority. The differing approaches of the judgments in the Full Court in this case, however, manifest the need for an authoritative Australian exposition of the concept of religion. It is desirable to grant special leave in order to expound, so far as the circumstances of the case require, a concept of religion appropriate to discriminate in law between what is a religion and what is not.

An endeavour to define religion for legal purposes gives rise to peculiar difficulties, one of which was stated by Latham C.J. in *Jehovah's Witnesses Inc.*, at p.123:

" It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world."

The absence of a definition which is universally satisfying points to a more fundamental difficulty affecting the adoption of a definition for legal purposes. A definition cannot be adopted merely because it would satisfy the majority of the community or because it corresponds with a concept currently accepted by that majority. The development of the law towards complete religious liberty and religious equality to which Rich J. referred in *Jehovah's Witnesses Inc.* (at p.149) would be subverted and the guarantees in s.116 of the Constitution would lose their character as a bastion of freedom if religion were so defined as to exclude from its ambit minority religions out of the main streams of religious thought. Though religious freedom and religious equality are beneficial to all true religions, minority religions - not well established and accepted - stand in need of especial protection (cf. per Latham C.J. in *Jehovah's Witnesses Inc.*, at p.124). It is more accurate to say that protection is required for the adherents of religions, not for the religions themselves. Protection is not accorded to safeguard the tenets of each religion; no such protection can be given by the law, and it would be contradictory of the law to protect at once the tenets of different religions which are incompatible with one another. Protection is accorded to preserve the dignity and freedom of each man so that he may adhere to any religion of his choosing or to none. The freedom of religion being equally conferred on all, the variety of religious beliefs which are within the area of legal immunity is not restricted.

Of course, the present case is not concerned with a personal freedom of religion; it is concerned with an exemption of a religious institution from a fiscal burden imposed upon other institutions, but no narrow definition of religion can be accepted on this account. There can be no acceptable discrimination between institutions which take their character from religions which the majority of the community recognizes as religions and institutions that take their character from religions which lack that general recognition. The statutory syncretism which a Parliament adopts in enacting a provision favouring religious institutions is not to be eroded by confining unduly the denotation of the term religion and its derivatives.

These considerations, tending against the adoption of a narrow definition, may suggest the rejection of any definition which would exclude from the category of religion the beliefs, practices and observances of any group who

assert their beliefs, practices and observances to be religious. But such an assertion cannot be adopted as a legal criterion. The mantle of immunity would soon be in tatters if it were wrapped around beliefs, practices and observances of every kind whenever a group of adherents chose to call them a religion (cf. *United States v. Kuch* 288 F.Supp.439 (1968)). A more objective criterion is required.

That criterion must be found in the indicia exhibited by acknowledged religions, so that any set of beliefs, practices and observances which are accepted by a group of adherents and which exhibit that criterion will be held to be a religion. But what is the range of acknowledged religions from which the criterion is to be derived? The literature of comparative religion, modern means of communication and the diverse ethnic and cultural components of contemporary Australian society require that the search for religious indicia should not be confined to the Judaic group of religions - Judaism, Christianity, Islam - for the tenets of other acknowledged religions, including those which are not monotheistic or even theistic, are elements in the contemporary atmosphere of ideas. But the task of surveying the whole range of Judaic and other acknowledged religions is daunting, as Professor Arnold Toynbee found:

" If we set out to make a survey of the religions that have been practised at different times and places by the numerous human societies and communities of whom we have some knowledge, our first impression will be one of a bewilderingly infinite variety."

(*An Historian's Approach to Religion*, 2nd ed., Oxford, 1979, p.16). And Sir James Frazer, in a passage in his *The Golden Bough* (Abridged edition, 1954, at p.50) cited by Young C.J. in the present case, confirms the opinion of Latham C.J.:

" There is probably no subject in the world about which opinions differ so much as the nature of religion, and to frame a definition of it which would satisfy everyone must obviously be impossible."

In the study of comparative religion, various analyses have been attempted, and none appears to have exhausted

the rich diversity of the available data (see Sharpe, *Comparative Religion*, Bristol, 1975). The derivation of all the common indicia of religions is thus a task which a court cannot hope to perform by a detailed analysis of all acknowledged religions. Indeed, courts are not equipped to make such a study, and the acculturation of a judge in one religious environment would impede his understanding of others. But so broad a study is not required. The relevant enquiry is to ascertain what is meant by religion as an area of legal freedom or immunity, and that enquiry looks to those essential indicia of religion which attract that freedom or immunity. It is in truth an enquiry into legal policy.

The law seeks to leave man as free as possible in conscience to respond to the abiding and fundamental problems of human existence. In all societies and in all ages man has pondered upon the explanation of the existence of the phenomenological universe, the meaning of his existence and his destiny. An understanding of these problems is furnished in part by the natural and behavioural sciences and by other humanist disciplines. They go far towards explaining the universe and its elements and the relationships between nations, groups and individuals. Many philosophies, however, go beyond the fields of these disciplines and seek to explain, in terms of a broader reality, the existence of the universe, the meaning of human life, and human destiny. For some, the natural order, known or knowable by use of man's senses and his natural reason, provides a sufficient and exhaustive solution to these great problems; for others, an adequate solution can be found only in the supernatural order, in which man may believe as a matter of faith, but which he cannot know by his senses and the reality of which he cannot demonstrate to others who do not share his faith. He may believe that his faith has been revealed or confirmed by supernatural authority or his reason alone may lead him to postulate the tenets of his faith. Faith in the supernatural, transcending reasoning about the natural order, is the stuff of religious belief. Augustus N. Hand J. said, obiter, in *United States v. Kauten* 133 F.2d 703 (1943), at p.708:

" ... the content of the term [religion] is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the

individual to his fellow-men and to his universe - a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it."

Under our law, the State has no prophetic role in relation to religious belief; the State can neither declare supernatural truth nor determine the paths through which the human mind must search in a quest for supernatural truth. The courts are constrained to accord freedom to faith in the supernatural, for there are no means of finding upon evidence whether a postulated tenet of supernatural truth is erroneous or whether a supernatural revelation of truth has been made. We would respectfully adopt what Douglas J. said in *United States v. Ballard* 322 U.S. 78 (1944), at pp.86,87 in reference to the freedom of religious belief:

" It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law."

Religious belief is more than a cosmology; it is a belief in a supernatural Being, Thing or Principle. But religious belief is not by itself a religion. Religion is also concerned, at least to some extent, with a relationship between man and the supernatural order and with supernatural influence upon his life and conduct. Clifford Geertz, writing an "Anthropological Study of Religion" in the *International Encyclopedia of the Social Sciences* (London, 1968, vol. 13, p.406) concluded that:

" Whatever else religion does, it relates a view of the ultimate nature of reality to a set of ideas of how man is well advised, even obligated, to live."

Thus religion encompasses conduct, no less than belief.

Professor Max Mueller, an early scholar in comparative religion, wrote (*Natural Religion* (Collected Works I, 1899, at p.169) cited by Sharpe, *op.cit.*, at p.39):

" When ... men began to feel constrained to do what they do not like to do, or to abstain from what they would like to do, for the sake of some unknown powers which they have discovered behind the storm or the sky or the sun or the moon, then we are at last on religious ground."

What man feels constrained to do or to abstain from doing because of his faith in the supernatural is *prima facie* within the area of legal immunity, for his freedom to believe would be impaired by restriction upon conduct in which he engages in giving effect to that belief. The canons of conduct which he accepts as valid for himself in order to give effect to his belief in the supernatural are no less a part of his religion than the belief itself. Conversely, unless there be a real connection between a person's belief in the supernatural and particular conduct in which that person engages, that conduct cannot itself be characterized as religious.

The canons of conduct which are part of a religion reflect that religion's set of beliefs, and thus a theistic religion typically includes the acceptance of a duty of ritual observance, as well as ethical practice. In *Jehovah's Witnesses Inc.*, McTiernan J. said (at p.156) that the "word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion". Conduct which consists in worship, teaching, propagation, practices or observances may be held to be religious, however, only if the motivation for engaging in the conduct is religious. That is, if the person who engages in the conduct does so in giving effect to his particular faith in the supernatural.

But the area of legal immunity marked out by the concept of religion cannot extend to all conduct in which a person may engage in giving effect to his faith in the supernatural. The freedom to act in accordance with one's religious beliefs is not as inviolate as the freedom to believe, for general laws to preserve and protect society are not defeated by a plea of religious obligation to breach them (cf. *Cantwell v. Connecticut* 310 U.S.296 (1940), at p.304). Religious conviction is not a solvent of legal obligation. Thus, in *Jehovah's Witnesses Inc.* a prohibition

against subversion of the war effort was not circumvented by the pacifist ideals of the Jehovah's Witnesses, and this Court rejected their challenge to the validity of the National Security (Subversive Associations) Regulations, even though s.116 protects both freedom of religious opinion and the free exercise of religion. In the United States, where similar constitutional guarantees are to be found in the First Amendment, the free exercise clause was held not to exempt the Mormons from the law forbidding polygamy, though they deemed it to be a religious duty, circumstances permitting, to practise polygamy. In *Reynolds v. United States* 98 U.S. 145 (1878), at p.167, the Supreme Court held that to excuse polygamy on religious grounds would "make the professed doctrines of religious belief superior to the law of the land, and in effect ... permit every citizen to become a law unto himself. Government could exist only in name under such circumstances". Conduct in which a person engages in giving effect to his faith in the supernatural is religious, but it is excluded from the area of legal immunity marked out by the concept of religion if it offends against the ordinary laws, that is, if it offends against laws which do not discriminate against religion generally or against particular religions or against conduct of a kind which is characteristic only of a religion.

We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion. Those criteria may vary in their comparative importance, and there may be a different intensity of belief or of acceptance of canons of conduct among religions or among the adherents to a religion. The tenets of a religion may give primacy to one particular belief or to one particular canon of conduct. Variations in emphasis may distinguish one religion from other religions, but they are irrelevant to the determination of an individual's or a group's freedom to profess and exercise the religion of his, or their, choice.

The test propounded by Adams J. in *Malnak v. Yogi* is wider and the test propounded by Dillon J. in *South Place Ethical Society* is narrower than the test which, in our opinion, is the correct test. *Malnak v. Yogi* followed upon a line of cases relating to exemption from compulsory

military service of persons claiming to be conscientious objectors "by reason of religious training and belief". In those cases the Supreme Court of the United States had been faced with the problem of distinguishing between conscientious objections founded on religious grounds and conscientious objections founded on non-religious grounds - a problem which does not arise in Australia: see *Reg. v. The District Court; Ex parte White* (1966) 116 C.L.R.644, especially at pp.659-661. The Supreme Court held that "religious" in this context described an opposition to military service stemming from moral, ethical or religious beliefs about what is right or wrong when the beliefs are held with the strength of traditional religious conviction: *Welsh v. United States* 398 U.S. 333 (1970); *United States v. Seeger* 380 U.S. 163 (1965); and see, under an earlier statute, the judgment of the Second Circuit Court of Appeals in *United States v. Kauten*. In *Seeger* the Supreme Court quoted from the writings of theologian Dr. Paul Tillich in the context of an examination of the place which a system of beliefs occupied in the life of an objector. The Court said (at p.187):

" We think it clear that the beliefs which prompted his objection occupy the same place in his life as the belief in a traditional deity holds in the lives of his friends, the Quakers. We are reminded once more of Dr. Tillich's thoughts:

' And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God' Tillich, *The Shaking of the Foundations* 57 (1948)."

(Emphasis supplied by the Supreme Court).

The views of the majority of the Supreme Court have been subjected to criticism both judicial and academic, (see, for example, Harlan J. in *Welsh*, at p.351; "Toward a Constitutional Definition of Religion" 91 *Harv.L.Rev.* 1056, at p.1065 n.60 (1978)), but that controversy need not detain us. What is significant for present purposes is

that, although the Supreme Court had resolved the question before it "solely in relation to the language of S.6(j) [of the *Universal Military Training and Service Act*] and not otherwise" (*Seeger*, at p.174), Adams J. gave the opinions of the Supreme Court a wider currency. He said (at p.204):

" As a matter of logic and language, if the Court is willing to read 'religious belief' so as to comprehend beliefs based upon pantheistic and ethical views, it might be presumed to favor a similar inclusive definition of 'religion' as that term appears in the first amendment."

An earlier decision of the Supreme Court in *Torcaso v. Watkins* 367 U.S. 488 (1961) also led Adams J. to a broader definition of religion. There the Court had held that neither a State nor the Federal Government could "aid those religions based on a belief in the existence of God as against those religions founded on different beliefs" and added, in a footnote (at p.495 n.11):

" Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

The Supreme Court had thus appeared to place within the concept of religion not only non-theistic religions but also systems of belief which had no supernatural element. That observation, together with the opinions in *Seeger* and *Welsh*, led Adams J. in *Malnak v. Yogi* to think that a new definition of religion, though not yet fully formed, could be described as a "definition by analogy". His Honour said (at p.207):

" The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.' "

Adams J. expressed the view that there are "three useful indicia that are basic to our traditional religions and that are themselves related to the values that undergird the first amendment" (at pp.207,208). The first of his indicia

was the "ultimate", nature of the ideas presented. The term "ultimate" seems to be derived from the writings of Dr Tillich. Adams J. said (at p.208):

" Expectation that religious ideas should address fundamental questions is in some ways comparable to the reasoning of the Protestant theologian Dr. Paul Tillich, who expressed his view on the essence of religion in the phrase 'ultimate concern.' Tillich perceived religion as intimately connected to concepts that are of the greatest depth and utmost importance."

This approach, however, focuses attention upon the nature of the questions which the set of ideas seeks to answer and diverts attention from the nature of the answers propounded. It furnishes a criterion which looks only to what we described above as the abiding and fundamental problems of human existence. Adams J. clearly identifies the nature of the questions which, if they are addressed by a set of beliefs, indicate the religious character of those beliefs. His Honour said (at p.208):

" One's views, be they orthodox or novel, on the deeper and more imponderable questions - the meaning of life and death, man's role in the Universe, the proper moral code of right and wrong - are those likely to be the most 'intensely personal' and important to the believer. They are his ultimate concerns. As such, they are to be carefully guarded from governmental interference ..."

To attribute a religious character to one's views by reference to the questions which those views address rather than by reference to the answers which they propound is to expand the concept of religion beyond its true domain. As the decision in Welsh illustrates, such an approach sweeps into the category of religious beliefs philosophies that reject the label of a religion and that deny or are silent as to the existence of any supernatural Being, Thing or Principle.

The other two indicia stated by Adams J. may be briefly mentioned. The second of the indicia is the comprehensiveness of the set of ideas. No doubt a set of religious ideas will frequently be comprehensive, but we would not deny the character of a religion to a set of

beliefs and practices which would otherwise qualify merely because its tenets aver or admit that knowledge of the supernatural is partial or otherwise imperfect or because its tenets offer no solution to some of the abiding and fundamental problems of man's existence. The third of the indicia is the existence of "any formal, external, or surface signs that may be analogized to accepted religions", such as formal services, a clergy or festivities. No doubt rituals are relevant factors when they are observed in order to give effect to the beliefs in the supernatural held by the adherents of the supposed religion. Thus ceremonies of worship are central to the Judaic religions manifesting their belief in and dependence on God. Mere ritual, however, devoid of religious motivation, would be a charade.

We are thus unable to accept the corporation's submission that this Court should apply the indicia which found favour with Adams J. in *Malnak v. Yogi*. The second and third indicia are not the criteria of a religion, though they may frequently be found in a religion. On the other hand, we are equally unable to accept the narrower tests which have been propounded in England. In *South Place Ethical Society* (at p.1572) Dillon J. said:

" It seems to me that two of the essential attributes of religion are faith and worship; faith in a god and worship of that god. This is supported by the definitions of religion given in the *Oxford English Dictionary* (1914), although I appreciate that there are other definitions in other dictionaries and books. The *Oxford English Dictionary* gives as one of the definitions of religion: 'A particular system of faith and worship.' Then:

' Recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence, and worship; '".

This test limits religion to theistic religions. A similar test had been applied by the Court of Appeal in *Reg. v. Registrar General, Ex parte Segerdal* [1970] 2 Q.B.697, where it was held that a chapel of the Church of Scientology was not a place of meeting for religious worship. In that case, however, the statutory reference to

worship suggested that Parliament had in mind a theistic religion. To restrict the definition of religion to theistic religions is to exclude Theravada Buddhism, an acknowledged religion, and perhaps other acknowledged religions. It is too narrow a test. We would hold the test of religious belief to be satisfied by belief in supernatural Things or Principles and not to be limited to belief in God or in a supernatural Being otherwise described.

We turn next to the beliefs, practices and observances the character of which is to be determined. The findings of the learned trial judge furnish some but not all of the relevant material. Crockett J. examined the history of the Scientology organization. He found that its predecessor in Australia was the Hubbard Association of Scientologists International ("H.A.S.I."), and that that Association had published, at some time not earlier than 1961, a magazine which unequivocally asserted "H.A.S.I. is non-religious - it does not demand any belief or faith nor is it in conflict with faith. People of all faiths use Scientology". His Honour investigated the subsequent history of the development of the cult, and found that a considerable transformation had ostensibly occurred. But his Honour thought that "the ecclesiastical appearance now assumed by the organization is no more than colourable in order to serve an ulterior purpose", namely, the purpose of acquiring the legal status of a religion so that the organization might have the fiscal and other benefits of that status in Australia and elsewhere and the purpose of avoiding the legal disabilities to which the organization was subject by reason of the *Psychological Practices Act 1965* (Vic.). His Honour expressed his clear conviction that the purported transformation of Scientology to a religion was no more than a sham, the proclaimed belief in the efficacy of prayer was bogus, and the adoption of the paraphernalia and ceremonies of conventional religion was a mockery. He said:

" The very adroitness - and alacrity - with which the tenets or structure were from time [to time] so cynically adapted to meet a deficiency thought to operate in detraction of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith."

Though his Honour found that at least some parts of Mr Hubbard's writing contained merely pretended doctrines

and practices of Scientology, his Honour found also that members of the Scientology movement are expected to and, apostates excepted, do accord blind reverence to the written works of Mr Hubbard. Although the sincerity and integrity of the ordinary members of the Scientology movement were not in doubt, his Honour held that Scientology was

"no less a sham because there are others prepared to accept and act upon such aims and beliefs as though they were credible when they can not see them for what they are. Gullibility cannot convert something from what it is to something which it is not."

Yet charlatanism is a necessary price of religious freedom, and if a self-proclaimed teacher persuades others to believe in a religion which he propounds, lack of sincerity or integrity on his part is not incompatible with the religious character of the beliefs, practices and observances accepted by his followers. If his Honour had approached the matter from the standpoint of the general group of adherents, he may well have found Scientology to be a religion, for he said:

"Quite possibly if I were to accept as genuine the principles, beliefs and practices supposedly now subscribed to by the scientology organisation, then I, too, might agree readily enough that its institution was religious in character."

No attack was made upon the sincerity or integrity of the witnesses who stated what the general group of adherents believed and accepted. The question to which the evidence was directed was not whether the beliefs, practices and observances of the persons in ultimate command of the organization constituted a religion but whether those of the general group of adherents constituted a religion. The question which the parties resolved to litigate must be taken to be whether the beliefs, practices and observances which the general group of adherents accept is a religion.

Upon the hypothesis that that is the question to be determined, the findings which Crockett J. made fall short of the findings required to satisfy each of the relevant elements of a religion according to the principles earlier stated. That is not surprising. There were no pleadings,

and the facts to be found necessarily depended upon whatever definition of religion was adopted. The Court had to determine both the ambit of the legal concept of religion and whether the subject beliefs, practices and observances fell within that ambit. Defining the issues for determination differently from the issues as we have stated them, the Supreme Court did not need to ascertain some of the facts which now appear relevant. Either further facts must now be found or the matter must be remitted to the Supreme Court.

There is neither a conflict in evidence nor a question of credibility which requires the matter to be remitted to the Supreme Court. However, the finding of further facts by this Court is rendered difficult by the absence of evidence to explain (if explanation be possible) those obscure parts in the library of books in which, it is said, the beliefs, practices and observances of the general group of adherents can be found. If any inability to ascertain whether the indicia of a religion are present arises because of the obscurity of the writing or the lack of evidence to explain it, the corporation must bear the consequences. It bears the onus of establishing its entitlement to the exemption specified in s.10(b).

Crockett J. made some findings as to the beliefs now expounded in Mr Hubbard's writings and accepted by his followers:

" According to the teachings of Mr. Hubbard the existence of a Supreme Being is to be affirmed and life is to be looked at in the terms of eight dynamics. The first is self and the eighth is the Supreme Being. The person himself is not his body but a thetan - equivalent one might say to a soul or spirit. Man's immortality exists in the power of the thetan to undergo infinite reincarnations. ... However, despite an occasional reference in Mr. Hubbard's books to a 'Supreme Being', or 'Divine being' or God and the placement of the eighth dynamic at the pinnacle of man's awareness of the other dynamics, it does seem apparent, as Winn, L.J. observed in *Segerdal's case*, that the doctrines of scientology are more concerned with 'the transmigration and education of thetans than they are with God in any shape or form or any concept of a divine superhuman, all powerful and controlling entity'."

We do not understand that the belief in the thetan or its capacity for infinite reincarnation is consequential upon or bears any relationship to a belief in a Supreme Being. Indeed Mrs Allen, the senior spokesman for the Church of Scientology in Victoria, said during her cross examination that there was nothing religious in Mr Hubbard's discovery of the thetan in 1951 by the use of scientific methods, but she thought that once man is discovered to be a spiritual being the discovery "can only become religious in its further research". Belief in a Supreme Being is now a part of Scientology, but there is no tenet of Scientology which expresses a particular concept of a Supreme Being. The name of the Supreme Being is left as a matter of individual choice. Each adherent must make up his own mind what his God is. It may be doubted whether a declaration that a Supreme Being exists is, without more, a mark of a theistic religion. But there is no doubt that a belief in the transmigration or infinite reincarnation of thetans is a belief in a supernatural principle. That belief does not require a concomitant belief in a Supreme Being before it qualifies as a religious belief. It is akin to the beliefs of Buddhism from which a large part of Mr Hubbard's ideas are said to be derived. The beliefs which, on Crockett J.'s finding, are accepted by members of the cult, satisfy the first criterion of a religion. But the second criterion is more troublesome. To satisfy the second criterion, the facts must show the acceptance of canons of conduct in order to give effect to a supernatural belief, not being canons of conduct which offend against the ordinary laws.

Finding Scientology's appearance of religion to be a sham, Crockett J. did not need to examine the relationship between the rituals and other canons of conduct propounded by Mr Hubbard and accepted by his followers on the one hand, and the supernatural beliefs entertained by those followers on the other. However, a book entitled *The Scientology Religion* was tendered and it contains chapters headed "Practices" and "Codes of Conduct: Ethics and Right Conduct". It is appropriate to search there for the relevant canons of conduct and their connection, if any, with belief in the supernatural. Several factors are referred to, the first of which is Ethics. Ethics is said to be "a rational system adopted by members of the Church, containing rules of conduct intended to promote the obtaining of spiritual betterment". The content of the ethical system is stated in this way (at p.44):

" 'Ethics is reason and the contemplation of optimum survival', and any ethical decision or calculation considered 'right action' would at the same time enhance survival for the maximum area of life (i.e. with regard to the eight dynamic principles), expanding and yet refining the doctrine of 'the greatest good for the greatest number' to include all dynamics of existence."

According to Mr Hubbard, the "Eight Dynamics" are urges or motivations, the last of which is called the Infinity or God Dynamic. His definition of the Eighth Dynamic is set out in *Scientology - The Fundamentals of Thought* (at p.38):

" ... the urge toward existence as Infinity. This is also identified as the Supreme Being. It is carefully observed here that the science of Scientology does not intrude into the Dynamic of the Supreme Being. This is called the Eighth Dynamic because the symbol of infinity stood upright makes the numeral '8'."

Mrs Allen, the corporation's principal witness, explained her belief in relation to the Eighth Dynamic in these terms:

" ...as the Thetan becomes more aware, particularly of the dynamics there is an urge to survive over all those areas and the urge to survive on that particular dynamic is to become aware - to aid the survival of and to be part of the survival of your supreme being, however you name that supreme being."

Failing to understand the meaning of the passages cited from Mr Hubbard's writing, we are unable there to find a connection between Scientology ethics and Scientology belief; but Mrs Allen seems, however obscurely, to be pointing to some exercise of the will connected with a belief in the survival of a thetan in association with a Supreme Being.

The second factor to which *The Scientology Religion* refers is the codes of conduct of which it is said (at pp.44,45):

" Like the Buddhist system, the Church of

Scientology has prescriptive moral codes intended for adherents; one is a Code of pastoral practice, the Auditor's Code; another is the Code of a Scientologist. The Code of a Scientologist is established to provide a covenant of right conduct for adherents of the Church with regard to matters involving the Church itself.

The Auditor's Code imposes definite regulations and ethical standards to be abided by in the counselling situation at all times.

A further Code, the Code of Honour has been written for each and every person to follow as he chooses."

The various codes of conduct are set out in *The Creation of Human Ability - A Handbook for Scientologists*, at pp.1-8. Auditing is an important aspect of Scientology practice. In *The Scientology Religion* it is stated (at p.37) to be:

" the Scientology Pastoral Counselling [sic] procedure by which an individual is helped, in stages, to recover his self-determinism, ability and awareness of self as an immortal being. It is done during a precise period of time called a 'session', in which an AUDITOR (literally 'one who listens') a trained Scientology minister-counsellor, uses inter-personal communication and carefully devised questions and drills which enable the person audited, called the PRECLEAR, to discover and thereby remove his self-imposed spiritual limitations."

Auditing appears to be the principal means of fulfilling the stated aim of Scientology (p.22):

" ... It is to help the individual become aware of himself as an immortal Being and to help him achieve and attain the basic truths with regard to himself, his relationship to others and all Life, his relationship to the physical universe and the Supreme Being. Further, we want to erase his sin so that he can be good enough to recognise God."

If auditing is an exercise in which the auditor and preclear engage in order to give effect to a belief in thetans or in the Supreme Being, it may be a religious exercise, and the "Auditor's Code" may thereby take on a religious character. But on its face, "The Auditor's Code" seems to be no more than pragmatic advice: for example, "Keep all appointments once made"; "Do not process a preclear after 10.00 p.m.". Or an instruction as to the conduct of auditing: for example, "Never permit the preclear to end the session on his own independent decision" or "Always continue a process as long as it produces change, and no longer".

Some of the canons in "The Code of a Scientologist" are clearly worldly advice: for example, "To discourage the abuse of Scientology in the press" or "To prevent the use of Scientology in advertisements of other products". The seventh canon may be related to the general teachings of Scientology for it says: "To employ Scientology to the greatest good of the greatest number of dynamics". Its meaning is impenetrably obscure.

"The Code of Honour" appears to contain some moral admonitions: for example, "Never desert a comrade in need, in danger or in trouble" or "Never fear to hurt another in a just cause". And it is possible that two of the canons of this code are related to a belief in the thetan:

" Your self-determinism and your honour are more important than your immediate life"

and

" Your integrity to yourself is more important than your body".

However, we can perceive no relevant connection between any canon of the codes of conduct and Scientologists' belief in the supernatural, unless auditing is itself a religious exercise satisfying the second indicium.

The third factor to which reference is made in *The Scientology Religion* (at p.46) is "the Scientology confessional", a part of auditing, which enables an individual to reveal his transgressions against "his own moral codes in terms of the Eight Dynamics, and the mores of his society". If the practice provides a means for an individual to "regain spiritual integrity and composure", as

Mr Hubbard claims, it is not stated to be for any reason related to the set of supernatural beliefs accepted by Scientologists.

Other factors to be considered are the rites and ceremonies - weddings, namings and funerals. Their existence is accounted for in this way: "Scientology has followed all other religions in developing rites and ceremonies" (*The Scientology Religion*, p.40). Mr Hubbard has written formularies for these ceremonies which contain allusions to the notion of the immortal thetan and the Eight Dynamics. They are set out in a book *Ceremonies of the Founding Church of Scientology*. That book opens with the statement: "In a Scientology Church Service we do not use prayers, attitudes of piety, or threats of damnation", but Mrs Allen asserts that a prayer for total freedom is said.

If we do not mistake what Mr Hubbard has written, he does not specify a connection between a supernatural belief (as to thetans or a Supreme Being) and the ethical rules or the codes or the practice of confession or the organization's ceremonies. One may readily appreciate how Crockett J. was led to the view which he expressed, for the writings of Mr Hubbard give to the practices and observances of Scientology the appearance of a farrago of imitations of established religions without the characteristic unity between a particular religion's practices and observances and that religion's set of beliefs in the supernatural. It may be that Mr Hubbard intends the practices and ceremonies to derive their significance from the practice of auditing and the question whether auditing is a religious practice thus assumes a central importance. Is auditing engaged in in order to give effect to a supernatural belief and, if so, is it lawful according to laws which do not discriminate against Scientology or against religion generally?

The service of auditing is rendered for a fee. It is usually sold "in a block of 12 1/2 hours" for a fee of \$650. The selling price of this and 66 other counselling services are displayed in a "Services Price List" which comes from the management echelon of the Scientology organization in America. A person who introduces a buyer for a service is paid a commission of 15% after the service is taken. An instruction to students of auditing includes this advice (*The Creation of Human Ability*, pp.xi, xii):

" That the only scarcity of preclears which will >

occur is through his own indigence, and his procurement of preclears or groups does not depend upon the industry of other auditors but of himself."

To become a minister in the Church, further training services are required. Unless the trainee is a staff member, he is charged a fee (which is not less than \$630) for the service. The fees for auditing and training are the principal sources of the Church's income. Sufficient appears in the evidence to have given rise to a real question as to whether Mr Hubbard or the Church organization intends that auditing be practised for religious or for commercial motives or for a mixture of both motives. If the case had been fought on the issue whether the corporation's purpose and activities were religious, the question of motivation may have emerged more clearly. The principal object of the corporation is stated in its constitution document to be the promotion of Scientology, and if auditing be the chief means of promotion, the motivation of the corporation in promoting auditing would have borne examination.

In the Full Court, Young C.J. was led away from this enquiry by holding that, as the corporation's principal object is the promotion of Scientology, the principal question in the appeal became: is Scientology a religion? But promotion of a religion is not necessarily undertaken in discharge of a religious duty or to fulfil some religious precept. Promotion of religion is not always the preserve of the religious and it may be motivated by pursuit of pecuniary or other venal advantage quite unconnected with and unmotivated by any belief in the supernatural. A commercial institution which derives its income from the sale of religious objects, the sale of religious services or the organization of church finances can hardly be described as a religious institution merely because its commercial activities incidentally conduce to the advancement of religion.

However, the motivation of the corporation in promoting auditing and the other aspects of Scientology has not been litigated, and it is material to determine whether the general group of adherents engage in auditing in order to give effect to their supernatural beliefs. Mrs Allen's evidence is that auditing is used to help a person shed the things that are stopping him from being as happy and as good as he wishes to be, and that the preclear is "handled" as a spiritual being.

The seeming vagueness of the supernatural beliefs and the obscurity of their expression renders difficult the perception of any connection between those beliefs and the practices and observances followed by the general group of adherents. Yet, as Crockett J. found, adherents, who number between 5,000 and 6,000 people in Victoria, accord blind reverence to what Mr Hubbard has written and it may therefore be inferred that they perceive some unifying thread which makes the whole intelligible, or which assembles sufficient of a jigsaw to allow them to see themselves and what they do as part of a supernatural reality. We think an inference should be drawn - though the material to support it is not compelling - that the general group of adherents practise auditing and accept the other practices and observances of Scientology because, in doing what Mr Hubbard bids or advises them to do, they perceive themselves to be giving effect to their supernatural beliefs. The commercial motivation to follow Mr Hubbard's advice is clear, but the evidence does not permit the conclusion that a desire to give effect to supernatural beliefs is not a substantial motive for accepting the practices and observances contained in his writings.

The Commissioner did not seek to show that auditing is unlawful according to the ordinary law. There was no attempt made to prove that auditing involved a contravention of the ordinary law save for a suggestion, which Mrs Allen rebutted, that false representations had been made as to the physical cures worked by auditing. Brooking J., in the Full Court, held that the *Psychological Practices Act* prohibited the beliefs, practices and observances of Scientology from being taught, but that Act (since repealed) discriminated expressly against Scientology. However, the Commissioner did not rely, either here or in the Supreme Court, upon a contravention of the *Psychological Practices Act*.

It follows that, whatever be the intentions of Mr Hubbard and whatever be the motivation of the corporation, the state of the evidence in this case requires a finding that the general group of adherents have a religion. The question whether their beliefs, practices and observances are a religion must, in the state of that evidence, be answered affirmatively. That answer, according to the conventional basis adopted by the parties in fighting the case, must lead to a judgment for the corporation.

Our reasons for departing from the conclusions reached by Crockett J. and by the Full Court sufficiently appear in what we have already written. The length of this judgment precludes an analysis of each of the judgments in the Supreme Court, but we would acknowledge the considerable assistance which we have derived from the anxious consideration which each of their Honours gave to the difficulties inherent in the case.

We would grant special leave to appeal, allow the appeal and, pursuant to s.33C of the *Pay-roll Tax Act*, reduce the assessment to pay-roll tax to nil. The corporation is entitled to its costs here and in the Supreme Court.

MURPHY J. This appeal turns on whether the Church of the New Faith, which was conceded to be an institution, is a "religious institution" and thus exempt from payroll taxation under the *Payroll Tax Act 1971 (Vic.) s.10(b)*.

In Australia there are a great number of tax exemptions and other privileges for religious institutions. Under numerous Federal and State Acts, Regulations and Ordinances they are exempted from taxes imposed on the public generally. Examples are stamp duty, payroll tax, sales tax, local government rates, and the taxes on motor vehicle registration, hire purchase, insurance premiums, purchase and sale of marketable securities and financial transactions. Ministers of religion are exempted from military conscription. There are also special censorship and blasphemy laws against those who deride or attack religious beliefs, particularly those of the Christian religions. There are many other State and Federal laws which directly or indirectly subsidize or support religion.

Because religious status confers such financial and other advantages, the emergence of new religions is bound to be regarded with scepticism.

Scepticism and Religion. Organized religion has always had sceptics, unbelievers, and outright opponents. Voltaire stated "Nothing can be more contrary to religion and the clergy than reason and common sense" (*Philosophical Dictionary 1764*). Jefferson declared "History, I believe, furnishes no example of a priest-ridden people maintaining a free civil government" (*The Writings of Thomas Jefferson, vol.6 (Washington ed. 1857) p.267*). Bakunin expressed opposition most strongly:

"All religions, with their gods, their demigods, and their prophets, their messiahs and their saints, were created by the credulous fancy of men who had not attained the full development and full possession of their faculties" (*God and the State (1910) p.12*).

Scepticism has been strong in Australia since European settlement. This has been attributed primarily to two causes. The progress of science displaced many European religious beliefs. Second, the conditions of settlement and the harsh environment encouraged a philosophy of life based on pragmatic individualism and mutual aid rather than adherence to the abstract dogma, indoctrination and rituals of the organized European religions.

Last century Marcus Clarke described religion as "an active and general delusion" (*Civilization Without Delusion* (1880) p.12). Henry Lawson, Joseph Furphy, Manning Clark, Patrick White, A.B. Facey and many other Australians have written sceptically about organized religion.

Religious freedom. Religious freedom is a fundamental theme of our society. That freedom has been asserted by men and women throughout history by resisting the attempts of government, through its legislative, executive or judicial branches, to define or impose beliefs or practices of religion. Whenever the legislature prescribes what religion is, or permits or requires the executive or the judiciary to determine what religion is, this poses a threat to religious freedom. Religious discrimination by officials or by courts is unacceptable in a free society. The truth or falsity of religions is not the business of officials or the courts. If each purported religion had to show that its doctrines were true, then all might fail. Administrators and judges must resist the temptation to hold that groups or institutions are not religious because claimed religious beliefs or practices seem absurd, fraudulent, evil or novel; or because the group or institution is new, the number of adherents small, the leaders hypocrites, or because they seek to obtain the financial and other privileges which come with religious status. In the eyes of the law, religions are equal. There is no religious club with a monopoly of State privileges for its members. The policy of the law is "one in, all in".

I have previously expressed the view that it is not within the judicial sphere to determine matters of religious doctrine and practice (*Attorney-General (N.S.W.) v. Grant* (1976) 135 C.L.R. 587 (and *Attorney-General (Q.) Ex Rel. Nye v. Cathedral Church of Brisbane* (1977) 136 C.L.R. 353, 377). The United States Supreme Court said "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect" (*Watson v. Jones* 80 U.S. (13 Wall) (1871) 679 at p.728).

The onus is on each applicant for tax exemption to prove, on the civil standard, that it is entitled to the exemption - that it is, more likely than not, a religious institution. Because so many different beliefs or practices have been generally accepted as religious, any attempt to define religion exhaustively runs into difficulty. There is no single acceptable criterion, no essence of religion. As Chief Justice Latham said:

"... it is not an exaggeration to say that each person chooses the content of his own religion. It is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character" (*Adelaide Company of Jehovah's Witnesses Incorporated v. The Commonwealth* (1943) 67 C.L.R. 116, 124).

The better approach is to state what is sufficient, even if not necessary, to bring a body which claims to be religious within the category. Some claims to be religious are not serious but merely a hoax (*United States v. Kuch* 288 Fed. Supp. (1968) p.439), but to reach this conclusion requires an extreme case. On this approach, any body which claims to be religious, whose beliefs or practices are a revival of, or resemble, earlier cults, is religious. Any body which claims to be religious and to believe in a supernatural being or beings, whether physical and visible, such as the sun or the stars, or a physical invisible god or spirit, or an abstract god or entity, is religious. For example, if a few followers of astrology were to found an institution based on the belief that their destinies were influenced or controlled by the stars, and that astrologers can, by reading the stars, divine these destinies, and if it claimed to be religious, it would be a religious institution. Any body which claims to be religious, and offers a way to find meaning and purpose in life, is religious. The aboriginal religion of Australia and of other countries must be included. The list is not exhaustive; the categories of religion are not closed.

Origins of Religion. Religion is undoubtedly an ancient phenomenon as is shown by archeological evidence, including cave and escarpment carvings and paintings. The Australian aboriginal religions are tens of thousands of years old. The Hindu religious texts, the Vedas, are said to date back six thousand years.

Religion has been explained as a development of magic and the need to rationalize the unknown. Natural events such as thunder, volcanic eruptions and floods, were viewed as the anger of a supernatural being or beings. Death, dreams and visions were also explained as involving divine and mysterious powers. Natural objects - the sun, moon, stars, mountains, volcanoes and trees were worshipped. It was easy for some people to delude others about their knowledge of these supernatural powers. Witchdoctors and priests claimed to have the ear of the

gods. Consistent with the idea that the gods had human attributes and desired admiration and gifts, priests made idols of human shape. These were served by the witchdoctors or priests who gained great social power. As people became sceptical of the divinity of idols, invisible gods were invented. Tribal history and myths, ceremonies, rituals, sacred objects and writings, and compulsory or discretionary rules about behaviour, health and diet, were built into an elaborate structure of belief. The religion so created often buttressed or became consolidated with the civil power as with the Pontifex Maximus, the Pharaohs, the Aztecs, . . . and many existing religions.

Another school views religion as the representation of a society's communal or collective consciousness and emphasizes the relationship between religious orientation and social structures.

Others have seen the origin of religion in deep-seated psychological impulses such as archetypes from the "Collective Unconscious". Jung explained that many religious dogmas, ceremonies and symbols were irrational because, like dreams, they were concerned with integrating the unconscious with the conscious mind, attempting ultimately to bring psychic "wholeness" to the personality. He wrote: "The religious myth is one of man's greatest and most significant achievements, giving him the security and inner strength not to be crushed by the monstrosity of the universe" (*Symbols of Transformation* (1956) p.231).

Church of the New Faith. The applicant Church is an evolution of "Scientology" based on the teachings of Mr Lafayette Ronald Hubbard who states that he drew inspiration from the Indian Vedas, Buddhism and the Tao-Te-Ching of Lao Tzu (*Phoenix Lectures* (1968) pp.1-35). Hubbard began publishing books on Scientology in the early 1950's in the United States. The first Scientology Church was the Church of Scientology of California founded 18 February 1954. Others have since been formed in many countries. Evidence was given that Scientology has some millions of members including about 150,000 in Australia (6,000 in Victoria).

As presented in this case (and these observations about Scientology are limited by what was presented and are necessarily extremely abbreviated) Scientology is based on "Dianetics". Central to "Dianetics" is the "engram", described as a "complete recording down to the last

accurate detail of every perception present in a moment of partial or full unconsciousness". These "engrams" are produced from threats or aids to the survival of the organism called "Dynamics". These eight "Dynamics" are the urge to survival through (1) self (2) sex or children (3) the group (4) all mankind (5) other life forms (6) the physical universe and its components Matter, Energy, Space and Time (7) spirit including "the manifestations or the totality of awareness of awareness units, thetans, demons, ghosts, spirits, goblins and so forth", (8) a Supreme Being, or "Infinity".

"Engrams" produced from interaction with these "Dynamics" form a "reservoir of data" stored in the "reactive" or "unconscious" mind. Mr Hubbard states that these "engrams" cause blockages in the personality; "This is the mind which makes a man suppress his hopes, which holds his apathies, which gives him irresolution when he should act, and kills him before he has begun to live". Through a process of dialogue known as "auditing", these "engrams" are raised to a conscious level and worked out, till a person becomes a "clear". As a "clear" a person identifies with his or her spiritual aspect or "soul" - the "thetan", and breaks free of the constraints and problems of the physical universe of Matter, Energy, Space and Time ("M.E.S.T.") which cause reincarnation.

Emphasizing such doctrines, the Hubbard Association of Scientologists International (as the organization was known in Australia in the early 1960's), called itself a "precision science" (*Testing Magazine* (1961) p.6) or "a form of experimental psychology" (*Communication Magazine* (1963) p.5). Since then it has "evolved". This "evolution" appears outwardly in the traditional trappings of organized European religion - Sunday meetings, ordination of ministers, clerical garb, symbols resembling the crucifix, various other ceremonies and dogmas. Many of the Scientology books in evidence contained the following statement:

"Scientology is a religious philosophy containing pastoral counselling procedures intended to assist an individual to gain greater knowledge of self ... The Hubbard Electrometer is a religious artifact used in the Church confessional. It, in itself, does nothing, and is used by Ministers only, to assist parishioners in locating areas of spiritual distress or travail".

Article One, section 2 and Article Two, section 2 of the appellant's constitution states:

"that Man's best evidence of God is the God he finds within himself, that the Author of this universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to Man and that it is the hope of Man that the teachings of the Church will bring a greater tranquility to the State and thus the better order and survival to Man upon this Planet".

In September 1965 a Victorian Government Board of Enquiry reported that "Scientology is evil; its techniques evil; its practice a serious threat to the community, medically, morally and socially; and its adherents sadly deluded and often mentally ill ... In a community which is nominally Christian, Hubbard's disparagement of religion is blasphemous and a further evil feature of scientology" (*Report of the Board of Inquiry into Scientology* (1965) pp. 1, 152). This report led to the *Psychological Practices Act 1965* (Vic.) which made the teaching of Scientology an offence (s.31(1)). However that Act did not apply to "anything done by any person who is a priest or minister of a recognized religion in accordance with the usual practice of that religion" (s.2(3)). These provisions were repealed on 29 June 1982 (*Psychological Practices (Scientology) Act 1982* (Vic.)).

The Church was recognized as a religious denomination under s.26 of the *Marriage Act 1961* on 15 February 1973 (*Commonwealth of Australia Gazette No.20*) and has been reproclaimed a number of times since, the last being 30 August 1983 (*Commonwealth of Australia Gazette No.G34*). It is granted exemption as a religious institution from payroll tax in South Australia, Western Australia, New South Wales and the Australian Capital Territory.

The Supreme Court of Victoria. The Commissioner of Payroll Tax having rejected the applicant's claim for exemption, the Victorian Supreme Court both at first instance (Mr Justice Crockett) and on appeal (Chief Justice Young, Justices Kaye and Brooking decided that the applicant was not a religious institution (*Church of the New Faith v. Commissioner for Pay-Roll Tax* [1983] V.R. 97). Mr Justice Brooking held against the applicant on the basis that it was illegal by reason of the *Psychological Practices*

Act. In the Supreme Court and on this appeal the respondent declined to rely upon that reasoning, and it may be disregarded. The other justices held against the applicant by applying unacceptable criteria.

Belief in God. Mr Justice Crockett held that "religion is essentially a dynamic relation between man and a non-human or superhuman being" (p.111). He found that the doctrines of Scientology were not sufficiently concerned with such "a divine superhuman, all powerful and controlling entity" (p.110). Mr Justice Kaye found absent an "acknowledgment of a particular deity by all members of the Church ... members of the Church might hold beliefs in, and have a personal relationship with, a different supernatural being" (p.134).

Most religions have a god or gods as the object of worship or reverence. However, many of the great religions have no belief in god or a supreme being in the sense of a personal deity rather than an abstract principle. Theravadan Buddhism, the Samkhya school of Hinduism and Taoism, are notable examples. Though these religions assert an ultimate principle, reality or power informing the world of matter and energy, this is an abstract conception described as unknown or incomprehensible. Idols or symbols representing it are contemplated (Woodroffe "The Psychology of Hindu Religious Ritual" in *Sakti and Sakta: Essays and Addresses* (1969) p.303). This meditation (rather than prayer or worship) is said to stimulate an awareness of the divine peculiar to the individual concerned. However in practice many adherents worship these images, representations and symbols as personal deities.

In the United States of America, belief in god or a supreme being is no longer regarded as essential to any legal definition of religion (*United States v. Kauten* 133 F.2d (1943) 703; *United States v. Ballard* 322 U.S. (1944) 78 and *Welsh v. United States* 398 U.S. (1970) 333). There, it is now sufficient that a person's beliefs, sought to be legally characterized as religious, are to him or her of "ultimate concern" (*United States v. Seeger* 380 U.S. (1965) 163). Buddhism, Taoism, Ethical Culture and Secular Humanism have been held to be religions (see *Torcaso v. Watkins* 367 U.S. (1961) 488, 495 n.11; *Washington Ethical Society v. District of Columbia* 249 F.2d (1957) 127; *Fellowship of Humanity v. County of Alameda* 315 P.2d (1957) 394).

The doctrine of a personal god has been seen by many as an unnecessary part of religious belief. Einstein declared:

"In their struggle for the ethical good, teachers of religion must have the stature to give up the doctrine of a personal God, that is, give up that source of fear and hope which in the past placed such vast power in the hands of priests. In their labours they will have to avail themselves of those forces which are capable of cultivating the Good, the True, and the Beautiful in humanity itself" (*Science and Religion in The Odyssey Reader* (1968) p.284).

Similarly Bertrand Russell stated:

"The whole conception of God is a conception derived from the ancient Oriental despotisms. It is a conception quite unworthy of free men. When you hear people in church debasing themselves and saying that they are miserable sinners, and all the rest of it, it seems contemptible and not worthy of self-respecting human beings. We ought to stand up and look the world frankly in the face" (*Why I am not a Christian*) (1976) p.17).

Julian Huxley wrote: "religion of the highest and fullest character can co-exist with a complete absence of belief in revelation in any straightforward sense of the word, and of belief in that kernel of revealed religion, a personal god" (*Religion Without Revelation* (1957) p.1).

Writings and Beliefs. The works of Scientology were referred to as "obscure", "tautologous", "ambiguous", "often ungrammatical" and "contradictory" by Chief Justice Young who stated "It is difficult to avoid the conclusion that one of the reasons for writing in this way is that it permits an explanation of the functions or purposes of the organization to be trimmed to whatever advantage is sought or can be obtained" (p.116).

Most religions have a holy book, sacred songs or stories, holy tablet or scroll containing a set of beliefs or code of conduct, often supposed to have been inspired by, or even given directly to a founder, by a god.

However, because the scriptures or writings of most religions are about the supernatural, mysteries and psychic

events, as well as often obsolescent theories about nature, they are frequently contradictory. Thomas Paine exposed the numerous contradictions in the Christian Bible (*The Age of Reason - Being An Investigation of True and Fabulous Theology* (1938)). Ambiguities, obscurities and contradictions are found in the holy books of many other religions. Religious language is frequently deliberately obscure and symbolic so as to hide mysteries from the uninitiated and communicate effectively with the unconscious mind. The oracle at Delphi was famous for prophecies so obscure that they could later be interpreted as having predicted whatever occurred. In any event, much writing is "obscure", "tautologous", "ambiguous", "often ungrammatical" and "contradictory", especially in philosophy, the social sciences, psychiatry and law.

Chief Justice Young also held that "the ideas with which scientology deals are more concerned with psychology than with ultimate truth ... man's place in the universe, or with fundamental problems of human existence" (p.125). The evidence does not sustain this finding. Further, psychology does concern itself with those subjects. Modern psychological studies suggest that levels of awareness or consciousness giving meaning and purpose to life, once regarded as exclusive to religion and shrouded in mystery and superstition, can be achieved by non-religious insights.

Revision of Beliefs. The respondent contended that the fact that in its early writings Scientology claimed to be a science rather than a religion indicates that its subsequent desire to be a religion cannot be genuine (Chief Justice Young, p.123, Mr Justice Kaye, p.135). Mr Justice Crockett stated "The very adroitness - and alacrity - with which the tenets or structure were from time to time so cynically adapted to meet a deficiency thought to operate in detractation of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith" (p.109).

There are many groups now recognized as religions which when they began claimed not to be. The development of Scientology resembles that of Christian Science. Mary Baker Eddy, the founder, claimed to deal with the development of human personality in a scientific way. Persecution, defections and associated lawsuits threatened to destroy what Mrs Eddy saw as her contribution to the welfare of humanity. So she took

advantage of the legal privileges extended to religion by obtaining a formal charter for her Church of Christ (Scientist) in 1879 (see Ahlstrom *A Religious History of the American People* (1972) p.1022). Many religions alter their beliefs to retain their social standing and acceptability. Most religions are not static but evolve in belief and structure as a result of internal and external pressure. As science has advanced, many religious beliefs have been abandoned or reinterpreted. When followers become sceptical, dogma tends to be reinterpreted as allegory, religious fact as fantasy and religious history as myth.

Code of Conduct. Chief Justice Young found that Scientology could also not be considered a religion because its doctrines contained "no complete or absolute moral code" (p.125). Most religions contain a code of principles regulating the spiritual and social activities of their members. Many codes confer sacred status on activities such as eating, sexual intercourse, marriage, birth and burial. Religious codes of conduct are usually so difficult to observe that the followers constantly infringe and must undergo some penance, either spiritual or financial, to placate the god, to overcome their feelings of guilt or to maintain their place within the religion. The idea of a "complete or absolute moral code" is however alien to the classical forms of religions such as Hinduism or Buddhism. In those, men and women do not offend against a set of principles but against themselves - reaping the karmic consequences of their actions. Schumann writes "Buddhism does not know of 'sin', i.e. offence against the commandments of ... a god. It only distinguishes between wholesome ... and unwholesome ... deeds - those leading towards liberation and those leading away from it" (*Buddhism An Outline of its Teachings and Schools* (1973) p.52).

Growth from traditional Religions. The superimposition of the "forms" and "ceremonies" of established religions (Chief Justice Young, p.126), the "calculated adoption of the paraphernalia, and participation in ceremonies, of conventional religion" were said to be "no more than a mockery of religion" (Mr Justice Crockett, p.109). But throughout history new religions have adopted and adapted the teachings, symbols, rituals and other practices of the traditional religions.

Buddha drew upon the earlier teachings of Hinduism, as did many Greek religious teachers such as Apollonius of

Tyana and Pythagoras. Mohammed drew upon Christian teachings and there is evidence in the Dead Sea and the Nag Hammadi Scrolls that the Christian teachings were based on those of the Essenes. Many religions copied from earlier religions the golden rule of respect for others.

Organized Christianity took over many of the forms and ceremonies of the pagan fertility rite of Easter (with its connections to the full moon and the northern spring equinox) and the winter solstice celebration on 25 December under the ancient calendars, the birth day of the solar deity Mithra. Leaders of the Christian Church from St. Paul to St. Augustine recognized the similarities between the Christian ceremonies of baptism and the eucharist and the Mysteries of Mithra, Cybele and Attis involving partaking of bread, fish and wine. As Charles Bradlaugh said "No religion is suddenly rejected by any people; it is rather gradually outgrown ... A superseded religion may often be traced in the festivals, ceremonies, and dogmas of the religion which has replaced it" (*Humanity's Gain From Unbelief* (1929), p.1-2).

Propitiation and Propagation. Chief Justice Young stated that there were "no elements of propitiation or propagation in any of the ceremonies" (p.126) of the Church of the New Faith. Blood sacrifices and other forms of propitiation by gift or worship were prominent in older religions. Modern religions however tend to replace actual with notional sacrifice and to replace propitiation or appeasement with concepts such as "making peace with ones soul". Absence of propitiation from Scientology only indicates that Scientology is somewhat removed from the primitive religions.

In the older religions propagation occurred in various ways, by natural increase amongst the adherents with which fertility rites were associated, and by conversion of non-believers. Indoctrination or "brainwashing" is typical of many religions. Often this takes place during an intense period of initiation. Adherence and conversion are also achieved in most religions by regular meetings, ceremonies and rituals. Special ceremonies may be held at times of physiological significance, such as puberty; times critically important for agriculture or natural food sources such as the onset of spring or midsummer; days historically important to the religion such as the founder's birth or death, or for astrological reasons. Scientology appears to conform to this general pattern of propagation.

Public Acceptance. Chief Justice Young stated: "I do not think that there has been in Victoria such public acceptance of scientology as a religion as requires the Court to treat it as such" (p.126). He said that the word "scientology" was not to be found in any "reputable dictionary" (p.115) but this was an error. The major Australian dictionary, *The Macquarie Dictionary* (1981), refers to Scientology as an "applied philosophy", and in the addenda to the *Shorter Oxford English Dictionary* (1977) it is referred to as "a religious system based on the study of knowledge, and seeking to develop the highest potentialities of its members". It is also referred to in the standard work the *Abingdon Dictionary of Living Religions* (1981) as a "religious movement founded in 1952 by L. Ron Hubbard, U.S. science fiction writer and author of the best-selling book *Dianetics* (1950), which launched a popular self-enhancement movement out of which Scientology emerged".

Most religions seek if not to convert the public at least to secure its acceptance of their beliefs. Nearly all religions commence as minority groups, often gathering around the teachings of one seemingly inspired individual. Their rise to public acceptance is normally very slow and difficult.

As the United States Supreme Court stated, a test of public acceptability would create "a danger that a claim's chances of success would be greater the more familiar or salient the claim's connection with conventional religiosity could be made to appear" (*Gillette v. United States* 401 U.S. (1971) 437, 457). The proliferation of religions and religious sects would present difficulties for any test based on public acceptability. There are now about 500 distinct groups in Australia (unpublished research of Tillet, Department of Religious Studies, University of Sydney (1982); see also list of recognized denominations under s.26 of the *Marriage Act 1961*, *Commonwealth of Australia Gazette No.G34*, 30 August 1983).

Claim to be the true faith. Chief Justice Young stated:

"It seems clearly possible on the evidence to embrace scientology whilst remaining an adherent of a recognized religion such as Roman Catholicism. There is no claim that scientology is the true faith. There is no obligation to accept a body of doctrine which is regarded as essential or even important" (p.127).

Scientology may be unusual in not claiming to be the one true faith. However, there have been many religious or quasi-religious groups which proclaim that their adherents may also adhere to other religions such as the Quakers, the Latitudinarians, the Theosophists, the Baha'is and the Zen Buddhists. Classical Hinduism in theory adopts the proposition "Truth is one; sages call it by different names" and embraces religious groups of widely different belief and structure.

The faith of members of various religions has inspired concern for others which has often been reflected in humanitarian and charitable works. However, the claim to be the one true faith has resulted in great intolerance and persecution. Because of this, the history of many religions includes a ghastly record of persecution and torture of non-believers. Hundreds of millions of people have been slaughtered in the name of god, love and peace. In the effort to uphold "the one true faith" courts have often been instruments for the repression of blasphemers, heretics and witches. Ingersoll claimed that such religious persecution sprung "from a due admixture of love towards God and hatred towards man" (*Lectures and Essays* (1956) p.42).

Commercialism. Chief Justice Young stated: "Nothing in the way the ideas of scientology are exploited commercially suggests that it is a religion. Indeed the considerations referred to under this heading might be thought to point clearly to the opposite conclusion" (p.128). The commercial operations were: (i) sale of services to members (ii) charges for instruction leading to ordination (iii) financial arrangements with overseas headquarters and (iv) registration as trade names words such as "Scientology" and other steps taken to protect trade marks, trade-names, patents and copyright, all owned by the founder, Mr Hubbard.

Most organized religions have been riddled with commercialism, this being an integral part of the drive by their leaders for social authority and power (in conformity with the "iron law of oligarchy"). The amassing of wealth by organized religions often means that the leaders live richly (sometimes in palaces) even though many of the believers live in poverty. Many religions have been notorious for corrupt trafficking in relics, other sacred objects, and religious offices, as well as for condoning "sin" even in advance, for money.

The great organized religions are big businesses. They engage in large scale real estate investment, money-dealing and other commercial ventures. In country after country, religious tax exemption has led to enormous wealth for religious bodies, presenting severe social problems. These often precipitate suppression of the religion or its leadership and expropriation of its wealth (see Larson *Church Wealth and Business Income* (1965); Larson and Lowell *The Religious Empire* (1976)). In the United States of America, where tax exemptions (but not subsidies) are available, Dr Blake former President of the National Council of Churches stated that in view of their favoured tax position America's Churches "with reasonably prudent management, ... ought to be able to control the whole economy of the nation within the predictable future" (*Christianity Today*, vol.3, No.22 (1959) p.7). Commercialism is so characteristic of organized religion that it is absurd to regard it as disqualifying.

Special Leave. Christianity claims to have begun with a founder and twelve adherents. It had no written constitution, and no permanent meeting place. It borrowed heavily from the teachings of the Jewish religion, but had no complete and absolute moral code. Its founder exhorted people to love one another and taught by example. To outsiders, his teachings, especially about the nature of divinity, were regarded as ambiguous, obscure and contradictory, as well as blasphemous and illegal. On the criteria used in this case by the Supreme Court of Victoria, early Christianity would not have been considered religious.

On this appeal, the Court was informed that following the Supreme Court's decision, the Victorian Commissioner of Probate Duties has refused to treat the Seventh Day Adventists as a religious institution. The Seventh Day Adventists are generally accepted as religious. They have been in Australia since 1885, and were "enthusiastic and dedicated proponents of liberty of conscience, and of the strict separation of Church and State" and campaigned vigorously for the introduction of a freedom of religion clause into the Constitution of the Commonwealth (see Richard Ely *Unto God and Caesar* (1976) p.27). The approach of the Supreme Court of Victoria, if allowed to prevail, would result in intolerable religious discrimination. The case for granting special leave to appeal is overwhelming.

Murphy J. |

CONCLUSION

The applicant has easily discharged the onus of showing that it is religious. The conclusion that it is a religious institution entitled to the tax exemption is irresistible.) *won*

The Commissioner should not be criticized for attempting to minimize the number of tax exempt bodies. The crushing burden of taxation is heavier because of exemptions in favour of religious institutions, many of which have enormous and increasing wealth.

Special leave to appeal should be granted and the appeal allowed. The applicant's objection to the assessment of payroll tax should be upheld. The Commissioner should pay the applicant's costs at every level.)

APPENDIX OF ADDITIONAL REFERENCESFinancial Advantages of Religion

Picarda "New Religions as Charities" *New Law Journal*, vol.131 (1981) p.436; Emory and Zelenak "The Tax Exempt Status of Communitarian Religious Organizations: An Unnecessary Controversy?" *Fordham Law Review*, vol.50 (1982) p.1085.

Scepticism and Religion

Cornford *Greek Religious Thought* (1923) p.134; Voltaire *Philosophical Dictionary* (Gay trans. 1962); Torrey *The Spirit of Voltaire* (1963) pp.263, 264; Baumer *Religion and the Rise of Scepticism* (1960); Nielsen *Scepticism* (1973); Chadwick *The Secularization of the European Mind in the Nineteenth Century* (1975); Lecky *History of the Rise and Influence of the Spirit of Rationalism in Europe* (1910); Redwood *Reason, Ridicule and Religion* (1976); Campbell "The Character of Australian Religion" *Meanjin Quarterly*, vol.36 (1977) p.178; Clark *Select Documents in Australian History 1851-1900* (1971) pp.797, 811-812; Wilson "The Church in a Secular Society" in *The Shape of Belief - Christianity in Australia Today* (Harris, Hynd and Millikan eds. 1982) p.1; Mol *Religion in Australia - A Sociological Investigation* (1955); Manning Clark *A Discovery of Australia: Boyer Lectures* (1976) p.13; Facey *A Fortunate Life* (1981) p.317.

Illegality of Religious Practices

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Solecki "The Implications of the Shanidar Cave Neanderthal Flower Burial" *Annals of the New York Academy of Sciences* vol.293 (1977) p.114; Noss *Man's Religions* (6th ed. 1974); Hadingham *Circles and Standing Stones* (1975); Finegan *The Archeology of World Religions* (1952); Berndt *Australian Aboriginal Religion* (1974); Elkin *Aboriginal Men of High Degree* (1981); *Law Age of the Rgveda* (1965).

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Sociological Approach to Religion

Durkheim "The Elementary Forms of the Religious Life" in *Durkheim on Religion* (Pickering ed. 1975) p.102; Harrison *Themis - A Study of the Social Origins of Greek Religion* (1927); Weber *The Sociology of Religion* (Fischhoff trans. 1963); Weber *The Protestant Ethic and the Spirit of Capitalism* (Parsons Trans. 1968); Wilson *Magic and the Millennium - A Sociological Study of Religious Movements of Protest Among Tribal and Third-World Peoples* (1973).

Psychological Approach to Religion

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Commercialism

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WILSON and DEANE JJ. The Commissioner of Pay-roll Tax (Vic.) ("the Commissioner") disallowed an objection by The Church of the New Faith Incorporated ("the applicant") to an assessment of pay-roll tax under the Pay-roll Tax Act 1971 (Vic.) ("the Act") in respect of the period 1 July, 1975 to 30 June, 1977. In so doing, he refused to accept that the applicant was, for the purposes of s.10(b) of the Act in the form applicable to that period, a "religious or public benevolent institution". At the request of the applicant, the Commissioner treated its objection as an appeal and referred the matter to the Supreme Court of Victoria. In that Court, Crockett J. and, on appeal, the Full Court (Young C.J., Kaye and Brooking JJ.) concluded that the applicant was not a "religious institution" for the purposes of the Act and that the Commissioner's assessment was therefore correct. The applicant seeks special leave to appeal from the decision of the Full Court. On the hearing of the application for special leave the parties have presented the arguments upon which they wish to rely in the event that leave is granted.

Section 10(b) of the Act, in the form applicable in respect of the relevant period, provided that the wages liable to pay-roll tax under the Act did not include wages paid or payable:

"(b) by a religious or public benevolent institution, or a public hospital;"

The Pay-roll Tax Act 1979 amended the Act by limiting the exemption of wages paid or payable by a religious institution to wages paid or payable by such an institution "to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in religious work of the religious institution".

The applicant was incorporated in South Australia in 1969 under the name "The Church of the New Faith Incorporated" pursuant to the provisions of the Associations Incorporation Act, 1956-1985 (S.A.). It subsequently changed its name to "The Church of Scientology Incorporated" but remains registered as a foreign company in Victoria under its original name. Its members are persons who accept and follow the writings of Lafayette Ronald Hubbard ("Hubbard"). Hubbard is an American who has acquired a substantial following in, inter alia, the United States, the United Kingdom and Australia. The estimate given of the number of his followers in Victoria was between five and six thousand. Evidence was given

that total membership was about 150 thousand in Australia and eight million throughout the world. The system or conglomeration, depending on one's viewpoint, of the ideas and practices contained in and advocated by his writings is known as "Scientology" and those who believe in those ideas and practices are known as "Scientologists". Hubbard's first two Scientology books were "Dianetics: The Modern Science of Mental Health" which was published in 1950 and "Science of Survival" which was published in 1951. He has written many subsequent books.

Senior counsel for the Commissioner expressly conceded, for the purposes of the appeal, that, if Scientology is properly to be seen as a religion in Victoria, the applicant was, for relevant purposes, a "religious institution". The appeal was argued by both sides on the basis that the only real issue is whether Scientology is, for relevant purposes, a religion in Victoria. With some hesitation, we shall approach the matter on that basis. In so doing however, we should not be understood as indicating a concluded view that that basis is necessarily a completely sound one. In that regard, it is not apparent to us that it is clear beyond argument either that the reference to an "institution", in the context of s.10(b), should not be construed as a reference to a particular establishment as distinct from the body of members, whether incorporated or unincorporated, of a particular religion or that the adjective "religious" in the phrase "religious institution" postulates an association between the relevant institution and what can be identified as a particular religion.

The "Constitution" of the applicant is in evidence. Its contents are appropriate to a religious organization. It refers to the applicant as "the Church" and provides that the applicant shall be comprised of persons admitted to membership "who accept the objects of the Church and who profess the belief that Man's best evidence of God is the God he finds within himself, that the Author of this Universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to man and who . . . by their use of the Church hope to bring a greater tranquillity to the State and better order and survival to Men upon this planet" (Article One, Section 2 and repeated in Article Two, Section 2 below). The Constitution provides that a member may be "excommunicated from the Church" by expulsion for a number of reasons, including failure to pay dues or tithes, disobedience and having been "guilty of heresy" (Article One, Section 3), and indicates that the

funds of the applicant are to be applied essentially for what might be generally described as the purposes of Scientology. It defines "Scientology" as meaning "the teachings, doctrines and statements of faith set out in Sections 1 to 4 of Article Two hereof ...". Those Sections of Article Two are as follows:

"Section 1 Religion of Scientology

To present and uphold the religion of Scientology as founded by the Church and as further developed by the Church as prescribed herein to the end that any person wishing to participate in its communion and fellowship may derive the greatest possible good of the spiritual awareness of his Beingness, Doingness and Knowingness.

Section 2 Doctrines of the Church.

To encourage religious faith and propagate the doctrines that Man's best evidence of God is the God he finds within himself, and that the Author of this Universe intended life to thrive within it, and that the Church is formed to espouse such evidence of the Supreme Being and Spirit as may be knowable to Man and that it is the hope of Man that the teachings of the Church will bring a greater tranquillity to the State and thus the better order and survival to Man upon this Planet.

Section 3 The Creed

To teach and expound the beliefs :

- (a) That God works within Man his wonders to perform.
- (b) That Man is his own soul, basically free and immortal but deluded by the flesh.
- (c) That Man has a God given right to his own life, reason, beliefs, mode of thought and/or thinking and to free and open communication.
- (d) That the human spirit is the only truly effective therapeutic agent available to Man.
- (e) That civilization can endure only so long as both spiritual and material needs find place within its structure.

- (f) That civilization is lost when God and the Spirit are forgotten by its leaders and its people.
- (g) That Man and the Nations of Man carry with them their own salvation and teachings exist sufficient to effect it.
- (h) That the Church exists to assist the strong and the weak, to suppress the wrongdoer and to champion the right and godly. Its mission is to carry to Man revelations and teachings and practices of the present and ages past and to assist him, his family and communities to live in greater peace and harmony.
- (i) That it is within the practice, teachings and tenets of the Church for the healing of the sick and suffering to be accomplished by prayer and other mental or spiritual means without resort to drugs or material remedy.
- (j) That the Holy Book of the Church consists of a collection of the works of and about the Great Teachers, including the work of St. Luke.
- (k) That the Saints of the Church are the messiahs and religious philosophers.
- (l) That the specific teachings of the Church concerning its Holy Book and its contributions made in more recent times on the Mind and Spirit are a result of scientific investigations concerning the human spirit and the physical universe.

Section 4 Religious Unity

To expound the essential unity of all religions and religious faith and the existence of a single Supreme Superhuman Power."

Two members of the applicant gave evidence on its behalf. The first, Mrs. Elaine Isobel Allen, was "responsible for the administration of the affairs" of the applicant in Victoria. The second, Mr. Clayton Cockerill, was "a senior administrative officer" of the applicant in Australia. It is common ground that Mrs. Allen and Mr. Cockerill are among the half dozen leading figures in the organization of Scientology within Australia. Each described herself or himself as a "Minister of Religion" of

The main affidavit sworn by Mrs. Allen contains some general information about the applicant and about the beliefs and activities of its members. Paragraph 4 reads as follows:

"As appears from Article 2 of the constitution and general rules of the Appellant the objects of the Church includes the object of presenting and upholding the religion of Scientology. The religion of Scientology was founded by Lafayette Ronald Hubbard, who is the spiritual leader of the adherents of the religion, including its adherents in Australia who are members of the Appellant. Now produced and shown to me and marked with the letters 'EIA4' is the work entitled 'The Scientology Religion' by the said Lafayette Ronald Hubbard. The said work is regarded by the trustees, ministers and members of the Appellant as authoritative and is adhered to by them in their conduct of the affairs of the Appellant and in their conduct of the religion of Scientology in Victoria, insofar as they are able to do so. Insofar as the said book contains statement of fact, I believe the same to be true. Insofar as the same contains statements of belief, the said statements of belief are the beliefs upon which the Appellant's activities are founded, and are beliefs which are adhered to by the trustees, the ministers and members of the Appellant, in Victoria. Insofar as the said book contains statements of opinions of persons quoted in the said book, the same are as I verily believed, the opinions [sic] honestly and sincerely held by such persons".

Mrs. Allen's statement to the effect that the work "The Scientology Religion" was regarded as authoritative by the trustees, ministers and members of the applicant and was adhered to by them in their conduct of the affairs of the applicant and in their conduct of Scientology in Victoria was not challenged expressly in cross examination nor was it controverted by other evidence. In essence, the case for the respondent was to point up internal inconsistencies in this and other materials written by Hubbard and to use such an analysis as a basis for challenging that their system of beliefs and practices constituted a genuine religion. Examination of "The Scientology Religion" discloses that it has been prepared with a conscious purpose of persuading the reader that Scientology is a religion. Plainly, it must be treated with some caution

especially as regards matters, such as the repeated assertion that Scientology is a religion, on which it conflicts with statements to be found in other Scientology works. Since the evidence is, however, that this book is regarded as authoritative by Scientologists in Australia, particular attention needs to be paid to it. A number of matters, confirmed by reference to other material which is in evidence, emerge from it.

Prominent among Hubbard's theories which constitute the basis of Scientology are doctrines of reincarnation in human form and the immortality of what is called the "thetan" which is represented as being an external force or spirit controlling the human body. Scientology is represented as concerning "survival" not in terms of the body but in terms of the spirit: "the thrust of survival is away from death and towards immortality". The ultimate goal and central concern is the escape of the "thetan" or spirit from the bondage of the matter, energy, space and time ("MEST") of the physical universe. Life is said to be viewed, in Scientology, in terms of "Eight Dynamics - self is the first dynamic, the Supreme Being is the eighth dynamic". Apart from the assertion that the Supreme Being constitutes the eighth "dynamic", there is little attempt at definition of the Supreme Being: on the other hand, much of Scientology writing is concerned with what is described as "progress upward toward survival on higher levels" which is consistently said to be "progress as well toward God" (see *Science of Survival*, Book II p. 244; *The Scientology Religion*, p. 29). The system or conglomeration of ideas which is represented as constituting Scientology is presented as influencing the conduct and lives of those who accept them. Indeed, the "auditing" or "counselling" procedure to which initiates are subjected is plainly intended to produce permanent effects involving what some outsiders might see as brainwashing and disorientation. The practices of the applicant include a form of service built around "a sermon" on matters such as "what a person is - body, mind, spirit" and ceremonies for particular occasions, namely, naming, wedding and funeral. The model forms of the ceremonies for particular occasions include exhortations about conduct and intimations of immortality.

The material in evidence discloses that up until at least 1965 Hubbard had not, in his writings, described Scientology as a religion. Indeed, the notion that Scientology was a religion was emphatically rejected in some writings of Scientologists. It would seem that the present day service and ceremonies, while described in detail in an

American publication in 1959, were not celebrated in Australia before the late 1960's. During the 1970's there were obviously concerted efforts to portray Scientology as a religion. Hubbard's writings commenced to stress the religious nature of the ideas he professed. An adhesive page headed by an emblem incorporating a cross has been affixed to the fly leaf of previously published books. The printed material on this adhesive page refers to Scientology as a "religious philosophy", to the "Mission of the Church" and to the "positive and effective religion of Scientology" and describes Hubbard's writings as "religious" and an electrical device (the "E Meter"), which is used in "auditing", as a "religious artifact". Those most actively concerned in the movement came to be called "ordained Ministers" or "Ministers of Religion" and began to wear conventional clerical garb and ornaments such as a clerical collar and the emblem of a cross.

There are two suggested explanations of the appearance in Scientology writings of assertions that Scientology is a religion and of the introduction of services and ceremonies as part of Scientology practices. The first is that there was an evolution in the system or conglomeration of ideas leading to a greater emphasis on the spiritual and that, in the conviction that Scientology had become a religion, it was thought appropriate to incorporate into it the type of practices which were ordinarily accepted as appropriate to a religion or religions in the communities where the numbers of Scientologists were significant. The evidence of Mr. Cockerill and Mrs. Allen indicates that this accorded with their belief of what had occurred. The second suggested explanation is that the motivation of those responsible for the appearance of assertions that Scientology is a religion and for the introduction of a service, ceremonies and other external indicia of a religion was no more than a cynical desire to present Scientology as what it was not for such mundane purposes as acquiring the protection of constitutional guarantees of freedom of religion or obtaining exemption from the burden of taxing laws. It was this explanation which was accepted by the learned trial judge. In strong language - "sham", "bogus", "mockery", "masquerade", "pretensions" and "charade" - his Honour concluded: that the creed and services described in a 1959 booklet called "*Ceremonies of The Founding Church of Scientology*" which had been published in America "played absolutely no part in the teaching or practice of scientology until the late nineteen sixties"; that "those so-called ceremonies were devised and published as a device to enable, with such attendant advantages as would thereby accrue, scientology to be paraded as a church in the

United States" and should properly be described as a "masquerade" and "charade"; that a Victorian Board of Enquiry Report "that was uncompromising in its denunciation of scientology as a profoundly evil movement from which gullible - and the not so gullible - members of the community required protection" had "gained publicity in countries and States where the organization was entrenched"; that the leaders of the Scientology movement succumbed to the temptation to avoid "destruction" of the movement by simulating, so as to become accepted as, a religion; that "the ecclesiastical appearance now assumed by the organization is no more than colourable in order to serve an ulterior purpose"; and, ultimately, that Scientology

"... is, in relation to its religious pretensions, no more than a sham. The bogus claims to belief in the efficacy of prayer and to being adherent to a creed divinely inspired and also the calculated adoption of the paraphenalia, and participation in ceremonies, of conventional religion are no more than a mockery of religion. Thus scientology as now practised is in reality the antithesis of a religion. The very adroitness - and alacrity - with which the tenets or structure were from time so cynically adapted to meet a deficiency thought to operate in detraction of the claim to classification as a religion serve to rob the movement of that sincerity and integrity that must be cardinal features of any religious faith".

Perusal of the whole of the evidence at first instance makes clear that, apart from some questions asked of Mr. Cockerill about his having acquiesced in being sworn on a Christian Bible, there was no suggestion made in the cross examination of Mrs. Allen and Mr. Cockerill that they were other than sincere in the beliefs they professed. Nor does the judgment of the learned trial judge contain any finding that any significant number of the more than five thousand Victorian members of the applicant was other than genuine and sincere. To the contrary, his Honour mentioned the "zeal akin to religious fervour" with which the adherents of Scientology embraced its teachings and indicated acceptance of the proposition that "there are many now who devoutly believe in the re-structured doctrines". In the course of argument in this Court, senior counsel for the Commissioner disclaimed any suggestion that Mr. Cockerill or Mrs. Allen was other than sincere and conceded that, however mistaken, inconsistent, illogical and even harmful some may think those beliefs and practices to be, the great majority of the Australian members of the applicant are sincere and

genuine in their acceptance of current Scientology writings and practices.

It was submitted on behalf of the applicant that there was no proper basis in the evidence for the strongly adverse findings of Crockett J. as to the sincerity of Hubbard and "those who have worked with, or for, him". In the view we take, it is neither necessary nor desirable to embark upon a consideration of that question. Once it is accepted that the applicant is an Australian organization of members who believe and follow the teachings and practices of Scientology as set forth in the current literature, it is not critical to the outcome of the present appeal that the members of the applicant in Victoria may be gullible or misguided or, indeed, that they may be or have been deliberately misled or exploited. That is not to deny that there are cases where what is put forward as being a religion cannot properly be so characterized for the reason that it is, in truth, no more than a parody of religion or a sham: the claimed religion of "Chief Boo Hoo" and the "Boo Hoos" in *United States v. Kuch* 288 F. Supp. 439 (1968) provides an obvious example of such a parody. Nor is it to deny that there may be cases in which the fraud or hypocrisy of the founder and leader of a particular system of claimed beliefs and practices constitutes the straw that weighs the balance against characterization as a religion. It involves no more than the conclusion that in the present case, where one has an organization consisting of thousands of Australians who genuinely believe and follow the current writings and practices of Scientology, the question whether Scientology is a religion in Victoria falls to be answered by reference to the content and nature of those writings and practices and to the part Scientology plays in the lives of its adherents in Victoria rather than by reference to matters such as the gullibility of those adherents or the motives of those responsible for the content of current writings and the form of current practices. As we have noted, the approach of counsel for the Commissioner substantially follows this approach to the problem. The thrust of his submission is directed to establishing that those writings and practices viewed in their entirety fall short of constituting a religion.

The word "religion" is not susceptible of the type of definition which will enable the question whether a particular system of beliefs and practices is a religion to be determined by use of the syllogism of formal logic. As Young C.J. pointed out in the Full Court of the Supreme Court, that question will ordinarily fall to be determined by reference to a number of indicia of varying importance.

Before attempting to identify what we see as the more important of those indicia, it is appropriate to consider whether it is possible to isolate any essential characteristic or characteristics without which one cannot have a religion.

In the Full Supreme Court, Kaye J. saw the essence of religion as the relationship between the individual adherent of the religion and his God. His Honour said:

"In my opinion, what distinguishes the belief or feelings with which a religion is concerned, and is fundamental to it, is the recognition of the existence of a Superior or Supernatural Being or Power with whom an individual has a personal relation and upon whom his own existence depends. The 'Superior or Supernatural Being or Power' may be referred to by the individual by any of a number of names, including Allah, God, or Jehovah; but it is immaterial by what name the deity is known or called. Indeed, the Superior Being may be without name. Furthermore, it may not be a single identity; two or more gods may constitute the foundation of a man's belief. The belief or feeling of the individual in relation to the deity is a personal one; although he may recognize and respect that others have their own god, his relationship to his own deity is characterized by the belief that his is the true and only deity."

Crockett J. had adopted a similar approach at first instance when, after referring to a number of authorities and definitions, he indicated his agreement with the statement of the majority of the United States Supreme Court in *Davis v. Beason* 133 U.S. 333 (1890), at p. 342 to the effect that "religion", as used in the First Amendment to the United States Constitution, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence of his being and character, and of obedience to his will".

In the context of a Western community, there is plainly force in the view that man's recognition of, and his relationship with, a personalized god constitutes the essence and central concern of religion. That is certainly true of the three great prophetic and monotheistic religions or groups of religions - Judaism, Christianity and Islam whose origins can be traced, directly or indirectly, to Israel and the Old Testament. One finds in Scientology

writings some acknowledgment of the existence of a Supreme Being or God. If, however, it be an essential requirement of a religion that it be centred upon recognition of the existence of a Supreme Being with whom an individual has a personal relationship and upon whom the individual's existence depends, Scientology does not satisfy it. As has been said, the central concern of Scientology is the delivery of the "thetan" or spirit, which is immortal, from the bondage of the body with little attention being paid to the identification or definition of, let alone any personal relationship with, the Supreme Being. The same can, however, be said of at least two of the immanentist religions or groups of religions which can be traced, directly or indirectly, to India and the Upanishads. Buddhism is, broadly speaking, agnostic about a god while Theravada Buddhism and Jainism, at least in its original form, actually deny the existence of a personal creator. For that matter, classical Hinduism itself was more concerned with the non-personalized Brahman than with the recognition of, or man's relation with, any one or more of the Hindu gods.

The identification by Kaye J. of both a recognition of, and a personal relationship with, a Superior or Supernatural Being or Power as constituting the essence of religion accords, no doubt, with the understanding of many, perhaps most, Australians of what lies at the heart of their own particular religion and religious beliefs. For the purposes of ordinary statutory construction in present day Australia however, we are unable to accept, as an essential element of "a religion", a characteristic which is, even arguably, not possessed by one or more of what are generally accepted as leading religions.

In *Adelaide Company of Jehovah's Witnesses Inc. v. The Commonwealth* (1943) 87 C.L.R. 116 at pp. 123-126, Latham C.J. referred to the difficulty, if not the impossibility, of framing an acceptable definition of religion for the purposes of s.116 of the Constitution and commented that it "is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character". Notwithstanding that there may be grounds for attributing a wider meaning to the word "religion" in the context of a constitutional guarantee against the establishment of a religion than in the context of a statutory exemption from a pay-roll tax, we are of the view that the above comment of Latham C.J., with which we respectfully agree, is in point in answering the question whether Scientology is a religion for the purposes of the present case. There is no single characteristic which can

be laid down as constituting a formularized legal criterion, whether of inclusion or exclusion, of whether a particular system of ideas and practices constitutes a religion within a particular State of the Commonwealth. The most that can be done is to formulate the more important of the indicia or guidelines by reference to which that question falls to be answered. Those indicia must, in the view we take, be derived by empirical observation of accepted religions. They are liable to vary with changing social conditions and the relative importance of any particular one of them will vary from case to case. We briefly outline hereunder what we consider to be the more important of them. In so doing, we are conscious of the fact that we are, of necessity, venturing into a field which is more the domain of the student of comparative religion than that of the lawyer.

One of the more important indicia of "a religion" is that the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has "a religion". Another is that the ideas relate to man's nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (cf. *Malnak v. Yogi* 592 F. 2d. 197 (1979)) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion.

As has been said, no one of the above indicia is necessarily determinative of the question whether a particular collection of ideas and/or practices should be objectively characterized as "a religion". They are no more than aids in determining that question and the assistance to be derived from them will vary according to the context in which the question arises. All of those indicia are, however, satisfied by most or all leading religions. It is unlikely that a collection of ideas and/or practices would properly be characterized as a religion if it lacked all or most of them or that, if all were plainly satisfied, what was claimed to be a religion could properly be denied that description. Ultimately however, that question will fall to be resolved as a matter of judgment on the basis of what

the evidence establishes about the claimed religion. Putting to one side the case of the parody or sham, it is important that care be taken, in the exercise of that judgment, to ensure that the question is approached and determined as one of arid characterization not involving any element of assessment of the utility, the intellectual quality, or the essential "truth" or "worth" of the tenets of the claimed religion.

The view which we have expressed of the meaning of "religion" accords broadly with the newer, more expansive, reading of that term that has been developed in the United States in recent decades. The story of that development is described by Circuit Judge Adams in his concurring opinion in *Malnak v. Yogi*. From his examination of three cases in particular, *Torcaso v. Watkins* 367 U.S. 488 (1961), *United States v. Seeger* 380 U.S. 163 (1965) and *Welsh v. United States* 398 U.S. 333 (1970), his Honour concluded that the theistic formulation presumed to be applicable in the late nineteenth century cases (e.g. *Davis v. Beason*) is no longer sustainable. "Religion" is not confined to the relationship of man with his Creator, either as a matter of law or as a matter of theology. Yet its definition remains unclear.

"The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions'" (at p. 207).

Adams J. identified three useful, though not essential, indicia by which to pursue the analogy to which he had referred. He described the first and most important of these indicia as "the nature of the ideas in question", whether they reflect those ultimate concerns which embody the fundamental problems of human existence. The second indicium is the element of comprehensiveness by which a set of ideas forms an integrated belief-system as distinct from a treatment of one or a number of isolated questions. The third indicium relates to forms and ceremonies which are comparable to those adopted by accepted religions. In conclusion, his Honour said:

"Although these indicia will be helpful, they should not be thought of as a final 'test' for religion. Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed.

Still, it is important to have some objective guidelines in order to avoid ad hoc justice" (at p. 210).

The conclusion to which we have ultimately come is that Scientology is, for relevant purposes, a religion. With due respect to Crockett J. and the members of the Full Supreme Court who reached a contrary conclusion, it seems to us that there are elements and characteristics of Scientology in Australia, as disclosed by the evidence, which cannot be denied. They bear repetition, with particular reference to the indicia which we have suggested. The essence of Scientology is a belief in reincarnation and concern with the passage of the "thetan" or the spirit or soul of man through eight "dynamics" and the ultimate release of the "thetan" from the bondage of the body. The existence of the Supreme Being as the eighth "dynamic" has been asserted since the early writings of Hubbard (see *Science of Survival*, Book I pp. 60 and 98, Book II pp. 244 and 289). The ideas of Scientology satisfy the first two indicia: they involve belief in the supernatural and are concerned with man's place in the universe and his relation to things supernatural. Scientology in Australia also satisfies all of the other above-mentioned indicia. The adherents accept the tenets of Scientology as relevant to determining their beliefs, their moral standards and their way of life. They accept specific practices and participate in services and ceremonies which have extra-mundane significance. In Australia they are numbered in thousands, comprise an organized group and regard Scientology as a religion. It was submitted that Scientology lacked comprehensiveness particularly as regards the nature of, and man's relationship with, the Supreme Being. It has been seen, however, that that is something which Scientology shares with the great Indian religions from which some of its ideas would appear to have been derived. It was also submitted that the fact that Scientology does not insist that its adherents disavow other religious affiliations indicates that it is not a true religion. That, again, is something which could be said of a number of religions including Hinduism, some types of Buddhism and Shintoism. Again, reference was made to some unusual features of membership in the organisation and to the strong commercial emphasis in its practices. However incongruous or even offensive these features and this ~~emphasis may seem to some of those outside its membership~~ other considerations to which we have referred.

As has been said, each case must be determined on the basis of the evidence adduced. With all respect to those

who have seen the matter differently, we do not consider the present case, when approached on that basis, to be a borderline one. Regardless of whether the members of the applicant are gullible or misled or whether the practices of Scientology are harmful or objectionable, the evidence, in our view, establishes that Scientology must, for relevant purposes, be accepted as "a religion" in Victoria. That does not, of course, mean either that the practices of the applicant or its rules are beyond the control of the law of the State or that the applicant or its members are beyond its taxing powers.

It should be mentioned that the Commissioner disclaimed any reliance upon the proposition, which found favour with Brooking J. in the Full Supreme Court, that the applicant's claims to be a religious institution were based on illegal purposes and activities upon which it could not be permitted to rely to establish entitlement to the claimed exemption from pay-roll tax. The proposition was derived from certain provisions of the *Psychological Practices Act 1965 (Vic.)*. The Court was informed that the proposition had not been raised at first instance, that evidence in relation to it might well have been led if it had been raised and that, in any event, the statutory basis for it had since been removed by subsequent amendment to that Act. In the circumstances, it would seem preferable that we refrain from expressing any view in relation to it.

Special leave to appeal should be granted. The appeal should be allowed. The decision of the Commissioner should be set aside and the applicant's objection to the assessment of pay-roll tax should be allowed. The Commissioner should be ordered to pay the applicant's costs at first instance, in the Full Court of the Supreme Court of Victoria and in this Court.